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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 19th August, 1987:—

BILL No. 84 OF 1987

A Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title, extent, application, commencement, duration and savings.

1. (*1*) This Act may be called the Terrorist and Disruptive Activities (Prevention) Act, 1987.

(*2*) It extends to the whole of India, and it applies also—

(*a*) to citizens of India outside India;

(*b*) to persons in the service of the Government, wherever they may be; and

(*c*) to persons on ships and aircraft registered in India wherever they may be.

(3) Sections 5, 15, 21 and 22 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 24th day of May, 1987.

(4) It shall remain in force for a period of two years from the 24th day of May, 1987, but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "abet", with its grammatical variations and cognate expressions, includes—

(i) the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists;

(ii) the passing on, or publication of, without any lawful authority, any information likely to assist the terrorists or disruptionists, and the passing on, or publication of, or distribution of, any document or matter obtained from terrorists or disruptionists;

(iii) the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists;

(b) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(c) "Designated Court" means a Designated Court constituted under section 9;

(d) "disruptive activity" has the meaning assigned to it in section 4, and the expression "disruptionist" shall be construed accordingly;

(e) "High Court" means the High Court of the State in which a judge or an additional judge of a Designated Court was working

immediately before his appointment as such judge or additional judge;

(*f*) "notified area" means such area as the State Government may, by notification in the Official Gazette, specify;

(*g*) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 13, and includes any person acting under the directions of the Public Prosecutor;

(*h*) "terrorist act" has the meaning assigned to it in sub-section (*1*) of section 3, and the expression "terrorist" shall be construed accordingly;

(*i*) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(*2*) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

PART II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

Punishment for terrorist acts.

3. (*1*) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(*2*) Whoever commits a terrorist act, shall,—

(*i*) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(*ii*) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*3*) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilities the commission of, a terrorists

act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment for disruptive activities.

4. (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Possession of certain unauthorized arms, etc. in specified area.

5. Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding

anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Enhanced penalties.

6. (*1*) If any person with intent to aid any terrorist or disruptionist, contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

54 of 1959.
4 of 1884
6 of 1908
20 of 1952

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (*1*) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

Conferment of powers.

7. (*1*) Notwithstanding anything contained in the Code or in any other provision of this Act, the Central Government may, if it considers it necessary or expedient so to do,—

(*a*) for the prevention of, and for coping with, any offence under section 3 or section 4; or

(*b*) for any case or class or group of cases under section 3 or section 4,

in any State or part thereof, confer, by notification in the Official Gazette, on any officer of the Central Government, powers exercisable by a police officer under the Code in such State or part thereof or, as the case may be, for such case or class or group of cases and in particular, the powers of arrest, investigation and prosecution of persons before any court.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government, referred to in sub-section (*1*), in the execution of the provisions of this Act or any rule or order made thereunder.

(3) The provisions of the Code shall, so far as may be and subject to such modifications made in this Act, apply to the exercise of the powers by an officer under sub-section (*1*).

Forfeiture of property of certain persons.

8. (*1*) Where a person has been convicted of any offence punishable under this Act or any rule made thereunder, the Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances.

(2) Where any person is accused of any offence under this Act or any rule made thereunder, it shall be open to the Designated Court

trying him to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the Government free from all encumbrances.

(3) (*a*) If upon a report in writing made by a police officer or an officer referred to in sub-section (*1*) of section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under this Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation.

(*b*) The Designated Court issuing a proclamation under clause (*a*) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(*c*) If, within six months from the date of the attachment, any person, whose property is, or has been, at the disposal of the Government under sub-section (*2*) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Designated Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

(*4*) Where any shares in a company stand forfeited to the Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forwith register the Government as the transferee of such shares. 1 of 1956.

PART III

DESIGNATED COURTS

Designated Courts.

9. (*1*) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Designated Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(*2*) Where a notification constituting a Designated Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (*1*), and a notification constituting a Designated Court for the same area or areas or for the same case or class or group of cases has also been issued by a State Government under that sub-section, the Designated Court constituted by the Central Government, whether the notification constituting such Court is issued

before or after the issue of the notification constituting the Designated Court by the State Government, shall have, and the Designated Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases, and all cases pending before any Designated Court constituted by the State Government shall stand transferred to the Designated Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Designated Court, it shall be referred to the Central Government whose decision thereon shall be final.

(4) A Designated Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction in a Designated Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Designated Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of a Designated Court of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Designated Court, the judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting

10. A Designated Court may, on its own motion or on an application made by the Public Prosecutor, and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Designated Court constituted by a State Government to any place outside that State.

Jurisdiction of Designated Courts.

11. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed or, as the case may be, by the Designated Court constituted for trying such offence under sub-section (1) of section 9.

(2) If, having regard to the exigencies of the situation prevailing in a State, the Central Government is of the opinion that—

(*a*) the situation prevailing in such State is not conducive to a fair, impartial or speedy trial, or

(*b*) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the judge of the Designated Court or any of them, or

(*c*) it is not otherwise in the interests of justice,

it may, with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General), transfer any case pending before a Designated Court in that State to any other Designated Court within that State or in any other State.

(*3*) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made thereunder which such Designated Court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the Official Gazette, in relation to such court (hereafter in this sub-section referred to as the local court) a Designated Court outside the State (hereafter in this section referred to as the specified court), and thereupon—

(*a*) it shall not be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules made thereunder;

(*b*) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;

(*c*) all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;

(*d*) all cases taken cognizance of by, or transferred to, the specified court under clause (*b*) or clause (*c*) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (*2*).

Explanation 1.—A notification issued under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

Explanation 2.—For the purposes of this section, "Attorney-General" means the Attorney-General of India or, in his absence, the Solicitor-General of India or, in the absence of both, one of the Additional Solicitors-General of India.

Power of Designated Courts with respect to other offences.

12. (*1*) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(*2*) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

Public Prosecutors.

13. (*1*) **For every Designated Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors.**

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases a Special Public Prosecutor.

(*2*) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(*3*) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (*u*) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Designated Courts.

14. (*1*) A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(*2*) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-section (*1*) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of

the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of section 11 shall be dealt with as if such case had been transferred under section 406 of the Code to such Designated Court.

(5) Notwithstanding anything contained in the Code, a Designated Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Certain confessions made to police officers to be taken into consideration.

15. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder. 1 of 1872.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

Protection of witnesses.

16. (1) Notwithstanding anything contained in the Code, all proceedings before a Designated Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Designated Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Designated Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Designated Court;

(*b*) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(*c*) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;

(*d*) that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by Designated Courts to have precedence.

17. The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other court (not being a Designated Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Power to transfer cases to regular courts.

18. Where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

19. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

Modified application of certain provisions of the Code.

20. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (*c*) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 21 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder,

subject to the modification that the reference to "the State Government" therein shall be construed as a reference to "the Central Government or the State Government".

(3) Section 164 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder, subject to the modification that the reference in sub-section (*1*) thereof to "Metropolitan Magistrate or Judicial Magistrate" shall be construed as a reference to "Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate".

(4) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that—

(*a*) the reference in sub-section (*1*) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate or Special Executive Magistrate";

(*b*) the references in sub-section (*2*) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "sixty days", "one year" and "one year", respectively; and

(*c*) sub-section (*2A*) thereof shall be deemed to have been omitted.

(5) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that—

(*a*) the reference in sub-section (*1*) thereof—

(*i*) to "the State Government" shall be construed as a reference to "the Central Government or the State Government";

(*ii*) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(*b*) the reference in sub-section (*2*) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(6) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving an offence triable by a Designated Court subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively.

(7) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made thereunder.

(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made

thereunder shall, if in custody, be released on bail or on his own bond unless—

(*a*) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(*b*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(9) The limitations on granting of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Presumption as to offences under section 3.

21. (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved—

(*a*) that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(*b*) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(*c*) that a confession has been made by a co-accused that the accused had committed the offence; or

(*d*) that the accused had made a confession of the offence to any person other than a police officer,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

Identification of accused.

22. Where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.

Saving.

23. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Designated Court shall be deemed to be a court of ordinary criminal justice.

Saving as to orders.

24. Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. 1 of 1872.

Overriding effect.

25. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Protection of action taken under this Act.

26. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.

Power of the Supreme Court to make rules

27. The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Designated Courts.

Power to make rules.

28. (*1*) Without prejudice to the powers of the Supreme Court to make rules under section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(*b*) the entry into, and search of,—

(*i*) any vehicle, vessel or aircraft; or

(*ii*) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon,—

(*i*) the Central Government;

(*ii*) a State Government;

(*iii*) an Administrator of a Union territory under article 239 of the Constitution;

(*iv*) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(*v*) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(*d*) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(*e*) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(*f*) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (*e*) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.

Rules to be laid before Houses of Parliament.

29. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agrees in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and saving.

30. (*1*) The Terrorist and Disruptive Activities (Prevention) Ordinance, 1987, is hereby repealed. Ord. 2 of 1987.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Terrorist and Disruptive Activities (Prevention) Act, 1985, was enacted in May, 1985, in the background of escalation of terrorist activities in many parts of the country at that time. It was expected then that it would be possible to control the menace within a period of two years and, therefore, the life of the said Act was restricted to a period of two years from the date of its commencement. However, it was subsequently realised that on account of various factors, what were stray incidents in the beginning have now become a continuing menace specially in States like Punjab. On the basis of experience, it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it is not only necessary to continue the said law but also to strengthen it further. The aforesaid Act of 1985 was due to expire on the 23rd May, 1987. Since both Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987), on the 23rd May, 1987, which came into force with effect from the 24th May, 1987.

2. The Ordinance included all the provisions of the Act of 1985 except the following main changes, namely:—

(a) punishments for terrorist acts and disruptive activities were made more deterrent;

(*b*) the Central Government has also been empowered to constitute Designated Courts;

(c) the exhaustive enumeration of rule making powers, as contained in section 5 of the 1985-Act, had been dispensed with and the Central Government had been given power to make rules for carrying out the provisions of the Ordinance.

3. Subsequent to the promulgation of the Ordinance, it was felt that the provisions need further strengthening in order to cope with the menace of terrorism. It is, therefore, proposed that persons who are in possession of certain arms and ammunition specified in the Arms Rules, 1962 or other explosive substances unauthorisedly in an area to be notified by the State Government, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and with fine. It is further proposed to provide that confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device shall be admissible in the trial of such person for an offence under the proposed legislation or any rules made thereunder. It is also proposed to provide that the Designated Court shall presume, unless the contrary is proved, that the accused had committed an offence where arms or explosives or any other substances specified in section 3 were recovered from his possession, or where by the evidence of an expert the finger prints of the accused were found at the site of offence or where a confession has been made by a co-accused

that the accused had committed the offence or where the accused had made a confession of the offence to any other person except a police officer. It is also proposed to provide that in the case of a person declared as a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade. Further, the Designated Courts are also proposed to be empowered to try certain offences in a summary way in accordance with the procedure prescribed in the Code of Criminal Procedure, 1973. The matters in respect of which rules may be made by the Central Government are also proposed to be enumerated. The said amendments included in the Bill, have been explained in the Memorandum attached to the Bill.

4. The Bill seeks to replace the aforesaid Ordinance and to include therein the aforesaid amendments.

NEW DELHI;
The 17th August, 1987.

BUTA SINGH.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117(3) OF THE CONSTITUTION OF INDIA

[Copy of letter No. 6/7/87-Legal Cell dated 17th August, 1987 from Shri Buta Singh, Minister of Home Affairs to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of Terrorist and Disruptive Activities (Prevention) Bill, 1987 recommends to the House the consideration of the Bill under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clause 9 of the Bill provides for the constitution of Designated Courts by the Central Government or the State Governments and also for appointment of Judges and Additional Judges of those Courts. Clause 13 of the Bill provides for appointment of Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the Central Government or the State Governments, as the case may be.

2. The expenditure towards the setting up of Designated Courts by the State Governments and towards salaries and allowances of the Judges, Public Prosecutors and staff of such courts will be defrayed out of the Consolidated Funds of the States. The expenditure towards setting up of Designated Courts by the Central Government in any State or Union territory (other than Pondicherry) will be met out of the Consolidated Fund of India. The likely expenditure for each Designated Court and on the salaries and allowances of the Judges, Public Prosecutors, Additional Public Prosecutors, staff, etc., over a period of six months is expected to be about Rs. 7 lakhs out of which Rs. 3.5 lakhs will be of a recurring nature and Rs. 3.5 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of actual expenditure that may have to be incurred in this behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill enables the Central Government to confer on any officer of the Central Government powers exercisable by a police officer under the Code of Criminal Procedure, 1973, in a State or part thereof, or for such case or class or group of cases and in particular the powers of arrest, investigation and prosecution of persons before any court. Provisions to confer powers as provided in clause 7 are necessary for securing effective administration of the provisions of the Bill.

2. Clause 27 of the Bill seeks to empower the Supreme Court to frame such rules, if any, as it may deem necessary for carrying out the provisions of the Bill relating to Designated Courts. The matters in respect of which the Supreme Court can make rules would relate to matters of detail and procedure. The power is sought to be conferred on the Supreme Court to enable it to provide for contingencies which it is not practicable to visualise and thereby secure the effective functioning of the Designated Courts.

3. Clause 28 of the Bill seeks to empower the Central Government to make rules for carrying out the provisions of the Bill. The particular matters in respect of which such rules may be made have been specified in sub-clause (2) of the clause. The rule making power under this clause is of sufficient amplitude to enable the Central Government to provide for stringent punishments within the limits specified in sub-clause (2) (d) and (e) for contraventions of the rules and for other matters connected with such contraventions. The situations which may arise as a result of terrorist and disruptive activities are of a very grave nature. Further it is not possible to visualise the various types of situations which terrorists and disruptionists may create.

4. In the context of the circumstances explained above, the delegation of legislative power involved is of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987

The Terrorist and Disruptive Activities (Prevention) Bill, 1987, which seeks to repeal and replace the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987, proposes to make the following modifications, apart from modifications of minor drafting nature, in the provisions contained in the said Ordinance:—

(i) Sub-clause (3) of clause 1 seeks to provide that sections 5, 15, 21 and 22 shall come into force at once and the remaining provisions of the proposed law shall be deemed to have come into force on the 24th day of May, 1987, that is to say, the date on which the aforesaid Ordinance came into effect, and shall remain in force for a period of two years from that date. Sub-clause (4) also includes a saving provision to the effect that the expiry of the proposed legislation will not affect pending proceedings on the lines of section 6 of the General Clauses Act, 1897.

(ii) Sub-clause (1) of clause 2 is being amended to include the definition of "notified area" to mean such area as the State Government may, by notification in the Official Gazette, specify.

(iii) Clause 5 seeks to provide that any person who is in possession of certain arms and ammunitions specified in Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, shall be punishable with imprisonment or a term which shall not be less than five years, but which may extend to imprisonment for life and also with fine.

(iv) Sub-clause (2) of clause 14 seeks to empower the Designated Court to try any offene, which is punishable with imprisonment for a term not exceeding three years or with fine or with both, in a summary way in accordance with procedure prescribed in the Code of Criminal Procedure, 1973 and the provisions of sections 263 to 265 of the said Code, shall, so far as may be, apply to such trial.

(v) Clause 15 seeks to provide that a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or an offence under the proposed legislation or any rules made thereunder. The police officer shall, however, explain to the person making the confession that he is not bound to make it and that, if he does so, it may be used as evidence against him.

(vi) Clause 21 seeks to provide that where it is proved that the arms or explosives or any other substances specified in clause 3

were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the ommission of an offence under that clause or where by the evidence of an expert the finger prints of the accused were found at the site of offence or on anything including arms and vehicles used in connection with the commission of such offence or where a confession has been made by a co-accused that the accused had committed the offence or where the accused had made a confession of the offence to any other person except a police officer, the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(vii) Clause 22 seeks to provide that where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.

(viii) Sub-clause (2) of clause 28 enumerates various matters in relation to which rules may be made by the Central Government without prejudice to the generality of the powers conferred by sub-clause (1) of that clause. Some of the important matters for which rules may be made relate to conferring powers upon the Central Government, a State Government, an Administrator of the Union territory, an officer of the Central Government of and above the rank of a Joint Secretary or an officer of a State Government of and above the rank of a District Magistrate to make general or special orders to prevent, or cope with terrorist or disruptive activities; arrest and trial of persons contravening any of the rules or any order made thereunder; the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term whch may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine.

SUBHASH C. KASHYAP,
Secretary-General.

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